

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID MICHAEL BAILEY,
Plaintiff,

v.

COUNTY OF STANISLAUS; DEPUTY
LARSON; DEPUTY ROSE; DEPUTY
GARCIA; CITY OF TURLOCK; DOE
ONE; and DOES 2-10,
inclusive.

Defendants.

No. 2:24-cv-03231-JAM-AC

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

Before the Court is County of Stanislaus, Deputy Larson, Deputy Rose, and Deputy Garcia's (collectively, "Defendants") motion to dismiss David Bailey's ("Plaintiff") complaint for failure to state a claim. See Mot., ECF No. 16. Defendant City of Turlock does not join in the present motion and has separately answered the Complaint. See ECF No. 13. Plaintiff opposed Defendants' motion. See Opp'n, ECF No. 18. Defendants replied. See Reply, ECF No. 19. For the following reasons, Defendants' motion is granted with leave to amend.¹

¹This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for April 22, 2025.

1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 This controversy arises out of the police shooting of
3 Plaintiff's nephew, Kevin Frey. See Compl. ¶ 57, ECF No. 1.
4 Plaintiff filed his complaint ("the Complaint"), bringing causes
5 of action under 42 U.S.C. Section 1983 and state law, as Mr.
6 Frey's successor in interest. See id. at 1. Plaintiff alleges
7 that Mr. Frey's mother, Judy Frey, was Mr. Frey's successor in
8 interest at the time of his death, and that because Ms. Frey has
9 since died, and Plaintiff was Ms. Frey's successor in interest,
10 Plaintiff is now Mr. Frey's successor in interest. See id. ¶¶ 4,
11 10.

12 Defendants move to dismiss Plaintiff's complaint for failure
13 to state a claim. See Mot. Defendants argue that Plaintiff has
14 not adequately pled his standing to bring this action as Mr.
15 Frey's successor in interest. See id. at 4-5. Plaintiff
16 counters that he alleged sufficient facts in the Complaint and in
17 his subsequent declaration. See Opp'n at 3.

18 II. OPINION

19 A. Legal Standard

20 A Rule 12(b)(6) motion challenges the sufficiency of a
21 complaint for "failure to state a claim upon which relief can be
22 granted." Fed. R. Civ. P. 12(b)(6). "To survive a motion to
23 dismiss [under 12(b)(6)], a complaint must contain sufficient
24 factual matter, accepted as true, to state a claim to relief
25 that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.
26 662, 678 (2009) (internal quotation marks and citation omitted).
27 Plausibility requires "factual content that allows the court to
28 draw the reasonable inference that the defendant is liable for

1 the misconduct alleged.” Id. While “detailed factual
2 allegations” are unnecessary, the complaint must allege more
3 than “[t]hreadbare recitals of the elements of a cause of
4 action, supported by mere conclusory statements.” Id.
5 Conclusory allegations are not to be considered in the
6 plausibility analysis. Id. at 679 (“While legal conclusions can
7 provide the framework of a complaint, they must be supported by
8 factual allegations.”). When a plaintiff fails to “state a
9 claim upon which relief can be granted,” the Court must dismiss
10 the claim. Fed. R. Civ. P. 12(b)(6). A complaint may be
11 dismissed for failure to adequately allege a plaintiff’s
12 standing. Lujan v. Defenders of Wildlife, 504 U.S. 555, 561
13 (1992).

14 B. Analysis

15 “The party seeking to bring a survival action bears the
16 burden of demonstrating that a particular state’s law authorizes
17 a survival action and that the plaintiff meets that state’s
18 requirements for bringing a survival action.” Moreland v. Las
19 Vegas Metro. Police Dep’t, 159 F.3d 365, 369 (9th Cir. 1998).
20 In California, Civil Procedure Code Section 377.32 provides that
21 a person seeking to commence an action as a decedent’s successor
22 in interest must show “facts in support” of the conclusion that
23 they are the “decedent’s successor in interest.” Cal. Civ.
24 Proc. Code § 377.32. Accordingly, “most federal courts to have
25 confronted the issue have found that plaintiffs must satisfy the
26 procedural requirements of section 377.32.” Anderson v.
27 Hickman, No. CIV. S-07-1466LKKDAD, 2008 WL 2397470, at *1 (E.D.
28 Cal. June 11, 2008) (collecting cases).

1 The Court must first determine whether it can consider the
2 alleged facts that Plaintiff provided in his declaration
3 submitted after the filing of the Complaint. The Court finds
4 that it cannot consider this declaration in resolving this
5 motion to dismiss.

6 On a motion to dismiss, a district court cannot consider
7 evidence outside the pleadings unless it is a document attached
8 to the complaint, a document incorporated by reference in the
9 complaint, or a matter of judicial notice. U.S. v. Ritchie, 342
10 F.3d 903, 908 (9th Cir. 2003). In his declaration, Plaintiff
11 provides facts supporting the conclusions that Ms. Frey was Mr.
12 Frey's successor in interest and that, in turn, Plaintiff is Ms.
13 Frey's successor in interest. See Declaration of David Bailey,
14 ECF No. 18-2. This declaration was not attached to the
15 Complaint. It also was not incorporated by reference because
16 Plaintiff did not "extensively" refer to it in the Complaint,
17 nor does the declaration "form[] the basis" of Plaintiff's
18 claims. See United States v. Ritchie, 342 F.3d 903, 908 (9th
19 Cir. 2003). This document is also not proper for judicial
20 notice because the declaration's alleged facts cannot be
21 "accurately and readily determined from sources whose accuracy
22 cannot reasonably be questioned." See Fed. R. Evid. 201(b)(2).

23 In the Complaint, Plaintiff summarily alleges that Ms. Frey
24 was Mr. Frey's successor in interest, and that Plaintiff is Ms.
25 Frey's successor in interest, which provides Plaintiff standing
26 to bring these claims as Mr. Frey's successor in interest. See
27 id. These allegations are legal conclusions, which the Court is
28 not bound to accept as true. See Iqbal, 556 U.S. at 679. There

1 are no factual allegations in the Complaint showing that Ms.
2 Frey was Mr. Frey's successor in interest, and there is a
3 similar lack of factual allegations supporting the inference
4 that Plaintiff is Ms. Frey's successor in interest. Plaintiff
5 thus has failed to plead "facts in support" of the conclusion
6 that he is the "decendent's successor in interest." See Cal.
7 Civ. Proc. Code § 377.32. Accordingly, the Complaint is
8 dismissed. See Fed. R. Civ. P. 12(b)(6); Lujan, 504 U.S. at
9 561.

10 C. Leave to Amend

11 A court granting a motion to dismiss must then decide
12 whether to grant leave to amend. Leave to amend should be
13 "freely given" where there is no "undue delay, bad faith or
14 dilatory motive on the part of the movant, . . . undue prejudice
15 to the opposing party by virtue of allowance of the amendment,
16 [or] futility of [the] amendment" Foman v. Davis, 371
17 U.S. 178, 182 (1962); Eminence Capital, LLC v. Aspeon, Inc., 316
18 F.3d 1048, 1052 (9th Cir. 2003) (listing the Foman factors as
19 those to be considered when deciding whether to grant leave to
20 amend). Dismissal without leave to amend is proper only if it
21 is clear that "the complaint could not be saved by any
22 amendment." Intri-Plex Techs., Inc. v. Crest Group, Inc., 499
23 F.3d 1048, 1056 (9th Cir. 2007) (citing In re Daou Sys., Inc.,
24 411 F.3d 1006, 1013 (9th Cir. 2005).

25 Here, leave to amend is granted because it is conceivable
26 that Plaintiff could plead factual allegations that show he has
27 standing to bring this action. See Eminence Cap., LLC v. Aspeon,
28 Inc., 316 F.3d at 1052. Leave to amend is not opposed by


Defendants, See Reply at 2, and will also not cause unnecessarily delay or prejudice to Defendants.

III. ORDER

Defendants' motion to dismiss is GRANTED WITH LEAVE TO AMEND. If Plaintiff elects to file an Amended Complaint, he must do so within twenty (20) days of this Order. Defendants shall file their response(s) to the Amended Complaint within twenty (20) days thereafter.

IT IS SO ORDERED.

Dated: April 14, 2025


JOHN A. MENDEZ
SENIOR UNITED STATES DISTRICT JUDGE